

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

ALFRED WAYNE PERRY,

Plaintiff,

v.

Case No. CV412-211

DANIEL W. MASSEY (in his capacity
as clerk of court); and ROBERT W.
ATTRIDGE (in his capacity as
Assistant public defender,

Defendants.

REPORT AND RECCOMENDATION

In *Perry v. Massey*, CV412-199 (S.D. Ga.), this Court twice directed inmate Alfred Wayne Perry to submit the forms needed to file the 42 U.S.C. § 1983 case that he seeks to bring against a clerk of state court and a public defender. *Id.* docs. 3 & 5. Since he twice failed to comply, the undersigned recommended dismissal pursuant to Fed. R. Civ. P. 41(b) and Local Rule 41(b). Doc. 6. That Report and Recommendation (R&R) is still pending.

Meanwhile, he filed this case, which is essentially a re-do of CV412-

199.¹ Having completed his IFP paperwork, docs 4 & 5, the Court will now screen his case under 28 U.S.C. § 1915(e)(2)(B)(ii) (a district court may sua sponte dismiss a claim of an a plaintiff proceeding in forma pauperis for failure to state a claim before service of process) and 28 U.S.C. § 1915A (courts must identify "cognizable claims" filed by prisoners or other detainees and dismiss claims which are frivolous, malicious, fail to state a claim for relief, or seek monetary relief from a defendant immune from such relief).

Perry is currently slated for a jury trial in state court on rape, aggravated sodomy, false imprisonment, aggravated assault, and aggravated sodomy charges. See attached docket sheets. Perry wants to sue that court's clerk (Daniel Massey), plus his appointed defense counsel (Robert W. Attridge), for "defamation" -- causing to be publicly posted the attached docket showing his indictment and subsequent proceedings. Doc. 1 at 7-8. This patently frivolous case should be

¹ He has also filed several other cases, including *Perry v. Pennington*, CV412-096 (S.D. Ga. Apr. 11, 2012), which was dismissed for failure to state a claim. *Id.*, doc. 11. He is a candidate for 28 U.S.C. § 1915(g) treatment.

DISMISSED WITH PREJUDICE.² It shall constitute a 28 U.S.C. § 1915(g) strike. *See supra* n. 1.

Meanwhile, Perry must pay for filing this lawsuit. Based upon his furnished information, he owes an initial partial filing fee of \$16.18. *See* 28 U.S.C. § 1915(b)(1) (requiring an initial fee assessment “when funds exist,” under a specific 20 percent formula). Plaintiff’s custodian shall deduct \$16.18 from Perry’s account and remit it to the Clerk of Court. The custodian also shall set aside 20 percent of all future deposits to the

² Government defamation resulting in an alteration in legal status may implicate a liberty interest under the Due Process Clause of the Fourteenth Amendment. *Paul v. Davis*, 424 U.S. 693, 711-12 (1976). *Paul*’s “stigma plus” standard requires a change in an individual’s legal status plus the stigma suffered from the government defamation. *Id.*; *Crowe v. County of San Diego*, 608 F.3d 406, 444 (9th Cir. 2010). But “the plaintiff also must demonstrate that [his] liberty was deprived without due process of law. Stated differently, the availability of adequate process defeats a stigma-plus claim.” *Hefferan v. Corda*, 2012 WL 4465320 at * 2 (2nd Cir. Sep. 28, 2012) (quotes and cite omitted). Here the state is giving Perry a full criminal trial -- all the process he is due. And just as it has published its charges against him, it will similarly publish any name-clearing acquittal.

For that matter, the defendant clerk enjoys quasi-judicial immunity from suit for routine *duties* (e.g., web-posting state court docket information) that are integrally related to the judicial process. *Jenkins v. Clerk of Court, U.S. Dist. Court, Southern Dist. of Fla.*, 150 Fed. App’x 988, 990 (11th Cir. 2005); *Harpo v. Davis*, 2012 WL 1038733 at * 2 (N.D. Ga. Mar. 27, 2012) (collecting cases). He also is immune under the Eleventh Amendment to the extent he is sued in his official capacity. *Id.* And since public defenders are not state actors within the meaning of § 1983, *Polk County v. Dodson*, 454 U.S. 312, 325 (1981), Perry’s case against Attridge fails on those grounds, too.

account, then forward those funds to the Clerk each time the set aside amount reaches \$10, until the balance of the Court's \$350 filing fee has been paid in full. In the event plaintiff is transferred to another institution, plaintiff's present custodian shall forward a copy of this Order and all financial information concerning payment of the filing fee and costs in this case to plaintiff's new custodian. The balance due from the plaintiff shall be collected by the custodian at his next institution in accordance with the terms of this Order.

A copy of this Order and a copy of the Consent to Collection of Fees from Trust Account shall be served upon plaintiff and his current custodian. The payment portion of this Order is to be implemented immediately, as it is not subject to the adoption provision of Fed. R. Civ. P. 72(b).

SO REPORTED AND RECOMMENDED this 22nd day of October, 2012.


**UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA**



CHATHAM COUNTY, GA Eastern Judicial Circuit of Georgia

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October 17, 2012

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State
VS.

PERRY, ALFRED WAYNE

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Case Information

Court: Superior
Case Number: CR112042
Case Type: RAPE
Judge: HONORABLE MICHAEL KARPF
Assistant District Attorney: FRANK PENNINGTON
Date Filed: 9/14/2011
Status: ACTIVE -
Next Event: 11/5/2012 TRIAL DOCKET CALL

Defendant Information

Name: PERRY, ALFRED WAYNE

DIN: P0910084

Chatham County Sheriff P0910084

Gender: MALE

Race: AFRICAN
AMERICAN

Height: 66

Weight: 180

Eyes: BROWN

Hair: BLACK

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[Defendant History](#)

Attorney Information

ANNE PANNELL RODMAN
 P O BOX 14064
 SAVANNAH, GA
 31406

Bondsman Information

N/A

Case Events

Date	Time	Code	Judge	Action
11/5/2012	09:30AM	TRIAL DOCKET CALL	MICHAEL KARPF	
9/10/2012	09:30AM	JURY TRIAL	MICHAEL KARPF	CANCELLED EVENT - CL
8/30/2012	1:30PM	JURY TRIAL DOCKET REVIEW	MICHAEL KARPF	
8/13/2012	09:30AM	TRIAL DOCKET CALL	MICHAEL KARPF	
6/4/2012	09:30AM	JURY TRIAL	MICHAEL KARPF	
5/31/2012	1:30PM	JURY TRIAL DOCKET REVIEW	MICHAEL KARPF	
5/29/2012	09:00AM	MOTION HEARING (MTH)	MICHAEL KARPF	
5/7/2012	09:30AM	TRIAL DOCKET CALL	MICHAEL KARPF	
4/16/2012	09:00AM	MOTION HEARING (MTH)	MICHAEL KARPF	
1/26/2012	1:30PM	JURY TRIAL DOCKET REVIEW	MICHAEL KARPF	
1/4/2012	09:30AM	TRIAL DOCKET CALL	MICHAEL KARPF	
11/14/2011	09:30AM	TRIAL DOCKET CALL	MICHAEL KARPF	
9/26/2011	09:30AM	JURY TRIAL	MICHAEL KARPF	

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Charges

Charge	Description	Counts	Severity	Charge Date	Disposition
(FVA)16-5-21	(Family Violence Act) Aggravated Assault	1	FELONY	2/16/2011	
16-5-41	FALSE IMPRISONMENT	1	FELONY	2/16/2011	
(FVA)16-5-21	(Family Violence Act) Aggravated Assault	1	FELONY	9/13/2011	
16-5-41	FALSE IMPRISONMENT	1	FELONY	9/13/2011	
16-6-1	RAPE	1	FELONY	9/13/2011	
16-6-2(AGG)	AGGRAVATED SODOMY	1	FELONY	9/13/2011	

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11/5/2012	09:30AM	TRIAL DOCKET CALL		MICHAEL KARPf	
9/27/2012		PRO SE LETTER RECEIVED			
9/20/2012		PRO SE LETTER RECEIVED			
9/18/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/13/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/10/2012	09:30AM	JURY TRIAL	CANCELLED EVENT - CL	MICHAEL KARPf	
8/30/2012	1:30PM	JURY TRIAL DOCKET REVIEW		MICHAEL KARPf	
8/20/2012		PRO SE LETTER RECEIVED			
8/20/2012		PRO SE LETTER RECEIVED			
8/16/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
8/14/2012		PRO SE LETTER RECEIVED			
8/13/2012	09:30AM	TRIAL DOCKET CALL		MICHAEL KARPf	
8/10/2012		PRO SE LETTER RECEIVED			
8/1/2012		PRO SE LETTER RECEIVED			
7/30/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
6/29/2012		PRO SE LETTER RECEIVED			
6/25/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
6/14/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
6/11/2012		PRO SE LETTER RECEIVED			
6/4/2012	09:30AM	JURY TRIAL		MICHAEL KARPf	
5/31/2012	1:30PM	JURY TRIAL DOCKET REVIEW		MICHAEL KARPf	
5/29/2012	09:00AM	MOTION HEARING (MTH)		MICHAEL KARPf	
5/24/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			CASE INQUIRY RPT/
5/17/2012		SUBPOENA			TO ABBY SALAZAR-SCMPD/OFF N KOHLES/ OFF WM SHARPLEY/MATT RUSSELL/BRUCE WATKINS/
5/7/2012	09:30AM	TRIAL DOCKET CALL		MICHAEL KARPf	
4/16/2012	09:00AM	MOTION HEARING (MTH)		MICHAEL KARPf	
4/2/2012		SUBPOENA DUCES TECUM			DR AL AHUJA/GLORIA SMITH/
2/14/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
2/13/2012		MOTION - IN LIMINE	MOOT		5-29-12 NO HEARING NEEDED/
2/2/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
1/30/2012		PRO SE LETTER RECEIVED			
1/26/2012	1:30PM	JURY TRIAL DOCKET REVIEW		MICHAEL KARPf	
1/23/2012		PRO SE LETTER RECEIVED			
1/12/2012		PRO SE LETTER RECEIVED			
1/6/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
1/6/2012		PRO SE LETTER RECEIVED			

1/5/2012		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
1/4/2012	09:30AM	TRIAL DOCKET CALL		MICHAEL KARPF	
12/30/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/30/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/30/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
12/15/2011		PRO SE LETTER RECEIVED			
12/5/2011		RESPONSE FROM OFFICE OF CLERK OF SUP CT			
12/5/2011		PRO SE LETTER RECEIVED			
11/22/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
11/22/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
11/21/2011		PRO SE LETTER RECEIVED			
11/18/2011		PRO SE LETTER RECEIVED			
11/14/2011	09:30AM	TRIAL DOCKET CALL		MICHAEL KARPF	
11/2/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/24/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/19/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/19/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
10/10/2011		PRO SE LETTER RECEIVED AND CLERKS RESPONSE			
9/26/2011	09:30AM	JURY TRIAL		MICHAEL KARPF	
9/23/2011		DEFENDANTS LIST OF WITNESSES			DISCLOSURE OF IMPEACHMENT EVIDENCE/
9/22/2011		SUBPOENA DUCES TECUM			DR AL AHUJA/
9/20/2011		SUBPOENA			BRUCE WATKINS/
9/19/2011		SUBPOENA			MATT RUSSELL/OFC WILLIAM SHARPLEY/OFC NICOLE KOHLES/ABBY SHALZAR/
9/15/2011 11:31:16 AM		SCREENING			INITIAL CASE SCREENING / SCANNING
9/14/2011		INDICTMENT			

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